99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-822

LABOR PROTECTIVE PROVISIONS FOR AIRLINE EMPLOYEES

SEPTEMBER 12, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

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REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4838]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 4838) to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is shown in the reported bill, with the matter proposed to be inserted shown in italic type.

COMMITTEE COMMENT

The bill reported by the Committee, H.R. 4838, requires the Department of Transportation to impose labor protective conditions (LPPs) in airline merger cases to ensure that the merger is fair to employees. These LPPs were routinely imposed by the Civil Aeronautics Board for many years to ensure that the seniority lists of merging airlines would be integrated in a fair and equitable manner and that some financial benefits would be provided to relieve the burdens on employees who lost their jobs or suffered a reduction in wages as a result of the merger. When the Civil Aeronautics Board announced in the early 1980's that it intended to abandon its policy of imposing LPPs, Congress responded by directing in the legislative history of the Civil Aeronautics Board Sunset

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Act of 1984 that LPPs should continue to be imposed. Regrettably, the Department of Transportation has failed to follow this directive and for this reason it has been necessary to go forward with legislation requiring that LPPs be imposed. The need for this legislation has increased greatly in recent months with a series of airline mergers involving a substantial portion of the industry's employees.

Adequate protection of airline employees is a critical part of airline deregulation. When the Committee reported the Airline Deregulation Act of 1978, we recognized that deregulation would impose penalties on companies which were inefficiently managed or misjudged what the public wanted. We wanted to be sure that airline employees would not be required to carry too great a portion of the burden of deregulation. For this reason, the 1978 Deregulation Act included labor protective provisions providing, first, that dislocated employees are entitled to financial benefits if there is a finding by the Civil Aeronautics Board—or since 1985, by the Department of Transportation—that the employee lost his or her job because of deregulation. The second LPP in the 1978 law provided that dislocated airline employees have the right of first hire on other airlines.

The LPPs which were included in the Deregulation Act of 1978 have been of almost no value to airline employees. One cause of the problem has been substantial delays by the Department of Labor in adopting implementing regulations. Under the 1978 Act, the Secretary was supposed to adopt these regulations six months after the bill was enacted. This deadline was not met. The Department of Labor has never adopted regulations to implement the financial benefits of LPPs. Regulations on the right-of-first-hire were not adopted until 1983 and, until recently, these regulations have been tied up in litigation.

In short, airline employees have never received the protections which were an essential part of the deregulation package.

Besides providing for flexible market entry and fare setting, the Deregulation Act also facilitated the ability of airlines to merge. However, we made it clear that we did not intend that the liberal merger policies would be used to treat airline employees unfairly. In recent months it has become increasingly obvious that the Department of Transportation intends to ignore the Congressional intent on this issue as well.

In directing that employees be protected in the mergers, Congress was only directing a continuation of historic practice. Before deregulation, the Civil Aeronautics Board always imposed LPP's when it approved mergers of major and national airlines. The merger LPPs were designed to ensure that the seniority lists of the merging airlines would be integrated in a fair and equitable manner and to provide direct financial benefits to help relieve the burdens on employees who lost their jobs or suffered a reduction in wages as a result of a merger.

After deregulation CAB imposed LPPs in the first merger cases. CAB then announced that it intended to change its policy and not impose LPPs. Congress did not agree with this change. In 1984, when the Civil Aeronautics Board was terminated and its remaining responsibilities transferred to the Department of Transporta-

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tion, Congress clearly and explicitly indicated—in the House committee report on the CAB Sunset Act (House Report 98–793)—that we intended DOT to continue to impose LPPs in merger cases. Despite this directive, DOT's recent decisions in airline mergers and similar cases indicates an unwillingness to impose LPPs.

The basic policy DOT has repeatedly announced in the merger and acquisition decisions it has rendered to date is that LPPs will not be imposed "unless it is necessary to prevent labor strife that could disrupt the national air transportation system." In a deregulated system, it is unlikely that labor strife arising out of a merger would disrupt the national air transportation system since other carriers are free to provide the services affected by a strike. DOT has stated that it will decide whether to impose LPPs on a case-by-case basis. However, in reality the standard DOT is using is highly unlikely to result in LPPs ever being imposed.

Thus the Department of Labor and Transportation have refused to follow existing statutes and explicit Congressional directives designed to ensure that airline employees would not be required to bear an unfair share of the costs of deregulation. H.R. 4838 will help restore the balance which Congress thought it had already established between management freedom and employee rights.

H.R. 4838 requires the Department of Transportation to impose LPPs when it approves airline mergers or similar transactions. Imposition of LPPs is required in any case in which the transaction would tend to cause reductions in employment or adversely affect working conditions, including seniority. It is important to note that LPPs will not be required if DOT finds that the projected cost of LPPs would outweigh the benefits of the merger or acquisition.

Some airlines have argued in opposition to LPPs that since the airlines have been deregulated it is unfair to subject airlines to special labor relations requirements different from those governing other industries. However, although our general approach has been to treat the deregulated airlines in the same manner as other industries, we have not been rigid or ideological and we have made exceptions where special circumstances exist. In many instances the airlines have supported these decisions. For example, under the CAB Sunset Act, the antitrust implications of airlines agreements and mergers are reviewed by the Department of Transportation rather than the Department of Justice which handles antitrust issues for other industries. Additionally, in aviation DOT may authorize airlines to implement an agreement or merger that violates the antitrust laws in cases where there are overriding transportation needs to be served.

Furthermore, the Department of Transportation has given the airlines the right to sell operating rights, sometimes worth millions of dollars, at four major airports. These operating rights were given to the airlines at no cost. Few airlines have objected to the DOT regulations allowing them to sell these rights. Legislation has been introduced to reverse the DOT policy, but even if this legislation passes, it is not retroactive and will not recapture windfall profits already realized from the sale of slots.

In short, when it has been required for national transportation policy, we have been willing to treat the airlines differently than other industries. We will follow the same approach in dealing with

the special problems created for airline employees by the wave of mergers which have been encouraged by deregulation.

The Committee further believes that some airlines opposing LPPs have greatly exaggerated the costs and burdens which LPPs are likely to impose. One important labor protection provision provides that integration of seniority lists should be accomplished by agreement between the carriers and employees, or if this cannot be accomplished, by binding arbitration. This provision only establishes fair procedures for the integration of seniority lists and should not be burdensome to the airlines.

Other LPPs provide financial relief for displaced employees. Some airlines claim that these requirements would impose astronomical costs. However, we have not been presented with evidence showing that the LPPs routinely imposed by the Civil Aeronautics Board ever resulted in any substantial cost to the airlines. The airlines' exaggerated estimates of the costs of LPPs have been developed by using the salaries of the most senior and highly paid airline employees. In reality, if any airline employees lose jobs as a result of a merger (and in most mergers the carriers promise that there will be no loss of jobs), it will be the most junior, lowest paid employees, since in the airline industry furloughs are based on seniority. Under the LPPs historically imposed by CAB, employees in their first year of service do not receive any financial benefits and employees with between one and two years of seniority receive six months compensation. If any financial benefit payments are required by a merger they are likely to go to these less senior employees.

The benefits which employees are likely to receive from LPPs are insignificant compared to the "Golden Parachutes" which protect top airline management. Many of these contracts provide several years pay for executives whose annual salaries are well in excess of $100,000. In some cases these benefits are avaliable even if an executive leaves the company voluntarily. Non-management employees are certainly entitled to benefits which are a mere fraction of those paid to top executives.

The Committee is concerned that without the imposition of labor protection provisions, employees may bear an unfair share of the burden of restructuring transactions in the airline industry. It is the intent of the Committee to protect the rights of employees in all transactions. Therefore, the Committee wishes to emphasize its intent to carefully monitor all transactions which may occur before this legislation is enacted to assure fair and equitable treatment of employees.

In sum, the reported bill requires the continuation of a merger LPP policy which was followed by the CAB for many years and which Congress directed the Department of Transportation to continue. Requiring merger LPPs is the least we can do to reverse the refusal of the Departments of Labor and Transportation to afford airline employees the protections which Congress intended them to have. These protections are particularly needed to mitigate the sometimes harsh effects on employees of the wave of mergers now sweeping the airline industry. We must do everything possible to reverse the disregard of the Departments of Transportation and Labor of the interests and future livelihood of employees and the

refusal of these Departments to carry out the clear legislative intent now on the books.

SECTION-BY-SECTION SUMMARY

Section 1 of the bill provides that in any cases in which the Secretary determines that a merger or other transaction, which is the subject of an application under Section 408 of the Federal Aviation Act, would tend to cause a reduction in employment or adversely affect wages and working conditions or seniority of air carrier employees, the Secretary shall impose labor protective provisions to mitigate the adverse consequences. The protective provisions will not be imposed if the Secretary finds that the projected cost of such protective provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction bear the burden of proving that there will be no adverse employment consequences or that the projected cost of protection would be excessive.

Under this provision, it is anticipated that labor protective provisions governing integration of seniority lists will afford opportunities for this issue to be resolved by agreement between the carriers and representatives of the employees affected. Binding arbitration will be required if there is a failure to reach a voluntry agreement.

Section 2 requires the Secretary of Transportation to conduct a study of the effect of the consolidation, mergers, and acquisitions of control of air carriers on the employment of minority group members as air carrier employees. The study must be submitted to Congress one year after date of enactement and shall include an assessment of the employment of minority group members as air carrier employees since the deregulation of the airline industry, and specific recommendatios for enhancing the participation of minority group members as air carrier employees.

It is the intent of the Committee that such a study contain a review of the current participation levels of minority group members, as defined by the legislation, in the various air carrier industry job classifications.

COMMITTEE ACTION AND VOTE

With respect to clause 2(l)(2) (A) and (B) of rule XI of the Rules of the House of Representatives, the Committee, with a majority present, favorably reported, by voice vote, H.R. 4838, on September 10, 1986.

Prior to Committee action and vote the Aviation Subcommittee held a hearing on H.R. 4838 on June 19, 1986, and on July 31, 1986, the Subcommittee considered and reported H.R. 4838 to the Committee.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that no separate hearings were held on the subject matter of the legislation by the Subcommittee on Investigations and Oversight.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report

from the Committee on Government Operations pertaining to the subject matter.

CONGRESSIONAL BUDGET ACT REQUIREMENTS

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and in compliance with section 308(a) of the Congressional Budget Act of 1974, the Committee reports that H.R. 4838 does not provide any new budget authority or new or increased tax expenditures.

With respect to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received the following report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 11, 1986.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4838, a bill to amend Section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions, as ordered reported by the House Committee on Public Works and Transportation, September 10, 1986. Enactment of the bill would result in a cost to the federal government of about $300,000 in fiscal year 1987.

H.R. 4838 would require the Secretary of Transportation to impose labor protective provisions as a condition of approval of an airline merger or similar transaction that the Secretary determines would cause a reduction in employment or adversely affect the wages and working conditions of any air carrier employees. Such conditions would not have to be imposed if the projected costs of protection would exceed the anticipated benefits of the transaction. This bill also would require the Secretary of Transportation to conduct a study of the effect of mergers and similar transactions of air carriers with respect to the employment of minority group members as air carrier employees, and to submit to the Congress a report on the study not later than one year after the date of the enactment of this act.

Based on information provided by the Department of Transportation (DOT), CBO estimates that this study will cost approximately $300,000 in fiscal year 1987. The DOT already investigates the potential employment effects of proposed mergers with respect to the imposition of labor protective provisions, and therefore the requirements regarding such provisions would have no significant budgetary impact.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

Inflationary Impact Analysis

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee reports that there should be no inflationary impact on prices and costs in the operation of the national economy by enactment of H.R. 4838.

Cost Estimate of Legislation

With respect to clause 7(A)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that H.R. 4838 authorizes no funding and that as estimated by CBO there should be costs of approximately $300,000 incurred by enactment of the hill.

With respect to clause 7(A)(2) of rule XIII of the Rules of the House of Representatives, the Committee reports that no cost estimate of H.R. 4838 was submitted to the Committee by a government agency.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Aviation Act of 1958

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TITLE IV—AIR CARRIER ECONOMIC REGULATION

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Consolidation, Merger, and Acquisition of Control

ACTS PROHIBITED

Sec. 408. (a) * * *

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FAIR TREATMENT OF EMPLOYEES

(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.

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DISSENTING VIEWS OF HON. E. CLAY SHAW, JR.

Mr. Chairman, I am extremely concerned about the retroactive implementation of this legislation. This bill, in its current form, would impose labor protective provisions (LPP's) on air carriers that are currently involved in merger activity. These carriers entered into these agreements relying on the Government's current policy. Had these air carriers known that Congress intended to impose LPP's, these mergers may well not have occurred.

For this reason, I offered an amendment, at the full Committee level, which would have effectively eliminated the retroactivity of this piece of legislation. My amendment stated that H.R. 4838 would not go into effect until the date of enactment of this Act. Thus, air carriers that had filed merger applications with the Secretary of the Department of Transportation, before the date of enactment, would be exempt from this legislation.

Mr. Chairman, I offered my amendment for two reasons. First, because I do not think that it is fair to change the rules in the middle of the game. In fact, I do not feel that imposing retroactive dates is a good way to legislate in any case. An act should not be effective until the President signs the bill into law.

Secondly, I am concerned that this bill could adversely affect mergers that have had their applications with the Secretary for months. In my opinion, it would be far worse to allow an airline to fail, resulting in the loss of thousands of jobs, rather than losing far less in a merger.

While I am concerned about the implications of imposing labor protective provisions, I understand the importance of seniroity list integration and am happy that this bill includes seniority integration as a part of the LPP's. Therefore, Mr. Chairman, at this time, I would have to support the Senate's version of this bill, which I believe deals with the question of seniority integration in a more fair and reasonable manner.

CLAY SHAW.

DISSENTING VIEWS OF HON. TOM DeLAY

The bill H.R. 4838 as reported by the Committee is a flawed piece of legislation. It was passed as an effort to aid the employees of airlines which are involved in mergers or takeovers. Unfortunately, the bill as passed could actually hurt those we are seeking to help.

This bill would mandate the imposition of Labor Protection Provisions (LPPs) in most airline merger cases. In light of recent developments, primarily the failure of the United/Frontier merger, it is not clear that federally imposed LPPs will have the affect of helping most airline employees in merger cases. The bill would also set up a government imposed system which could serve to protect the wages and benefits of a few by denying job opportunities to others. Both of these concerns should be addressed before such legislation is passed by the full House.

It is well known that the United/Frontier merger was unsuccessful due to the problems negotiating LPPs with the Airline Pilots Association. In that case, excessive union demands made the deal unacceptable to the United Airlines. The provisions mandated by this bill will undoubtedly lead to similar problems where mergers that might otherwise take place are thwarted. The only alternative in such cases will be for the struggling airline to file for bankruptcy. The bill does provide that the cost of imposed protection provisions shall not exceed the economic benefits of the transaction, however, this does not assure that such federal interference will not sour the deal. As in the Frontier case, this can be disastrous for thousands of airline employees who may lose their jobs. Where the intent of the bill is to help employees in merger cases, the actual result could be disastrous for those we seek to help.

The bill fails to clearly define both the type and scope of LPPs which should be imposed. This leaves a Secretary of Transportation free to impose provisions to protect a few workers at the expense of many others. During mark-up, I offered an amendment which would disallow any LPPs which would reduce the ability of an airline to provide employment. Witout such a provision, the bill could force a Secretary to impose provisions which would protect benefits and wages for some but which would eliminate job opportunities for others. It should not be the policy of the federal government to limit job opportunities and, unfortunately, the bill as reported will not only allow, but virtually mandate such a policy.

Additionally, there is no justification for singling out the airline industry for government imposed LPPs. Over the past several years there have been hundreds of corporate mergers. No one who was affected by these mergers was portected through such heavy-handed government intervention. This bill would mandate such intervention for airlines and only for airlines.

In his opening statement at the hearings on this bill, Chairman Minetta noted that a justification for singling out the airline indus-

try for the imposition of LPPs is that "we wanted to be sure that airline employees would not be required to carry too great a portion of the burden of deregulation." Similarly, it is argued that airline employees once had the benefit of LPPs as imposed by the CAB under regulation. These arguments, however, only apply to that portion of airline employees who were hired before deregulation. Those hired since then had no expectation of LPPs. They knew, or at least should have known, that they were being employed in a competitive environment that offers no greater guarantees than most other jobs.

The airline industry should not be singled out for imposition of LPPs. But if it is to be, at the very least, those employees who have been hired since airline deregulation have no claim on the historic, CAB LPPs.

By including those who were hired since deregulation, the bill will be putting more people in the industry at risk. These mergers, however unpleasant for employees of an acquired airline, are certainly preferable to bankruptcy, in which case everybody is out of a job with absolutely no protection. During mark-up an amendment was defeated which would have excluded coverage of post-deregulation employees. Such a provision would give airlines the flexibility to freely negotiate with regard to post-deregulation employees, which would increase the chances that the struggling airlines will merge rather than go bankrupt.

A good example is People Express. Every employee of that company would be exempted from LPPs under such an amendment. Peoples Express is now struggling and could conceivably become invovled in a merger in the near future. Those who are employed by Peoples have always known that it was an untried and risky venture. They knew when they took the job that if the company's concept worked, they would stand to benefit greatly, and if it failed then they might be looking for a job. At best, giving them the benefit of LPPs now would be an unjustifiable windfall because they never expected to get them in the first place. At worst, they could be hurt by LPPs if the threat of mandated LPPs denied them the opportunity to receive the benefit of a merger rather than bankruptcy. It has been argued that such a provision would set up two classes of airline employees. It must be clearly understood that the bill itself sets up two classes employees: those who work for an airline and those who do not.

Unless these changes are made, this bill could have serve and unitended consequences for thousands of people who are now employed in the airline industry.

TOM DELAY.

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